

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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DARNELL E. WILLIAMS and  
YESSENIA M. TAVERAS,

Plaintiffs,

v.

ELISABETH DEVOS,<sup>1</sup> in her official  
capacity as Secretary of the U.S.  
Department of Education and STEVE  
MNUCHIN, in his official capacity as  
Secretary of the U.S. Department of the  
Treasury,

Defendants.

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Civil No. 16-11949-LTS

ORDER

July 27, 2017

SOROKIN, J.

The Motion Hearing scheduled for August 2, 2017, is CANCELLED. The Court Orders all claims against Defendant Mnuchin DISMISSED as Plaintiffs request voluntary dismissal and Defendants do not oppose. See Doc. No. 23, 26 at 1 n.2; Fed. R. Civ. P. 41(a)(1)(A). Thus, one issue remains: the Secretary of Education's Motion to Dismiss, Doc. No. 18, which Defendant has confined solely to an argument that the Court lacks subject matter jurisdiction under Rule 12(b)(1). In reviewing the operative complaint and the parties' submissions, Plaintiffs appear to claim first that the Secretary, before rendering a final certification decision, must consider information known to her even when the borrower fails to respond to the notice of possible

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<sup>1</sup> See Fed. R. Civ. P. 25(d).

certification. This claim might not be capable of proper resolution on a Rule 12(b)(1) motion. For example, if Plaintiffs were correct (something the Court offers no opinion on currently) then, perhaps, the claim is exhausted; that is the Plaintiffs are merely saying the Secretary improperly disregarded certain general information she knew but failed to consider or failed to weigh properly when she made the certification decision. This “exhaustion” question then may itself be intertwined with the merits. Second, Plaintiffs appear to claim that in response to the letter or filing from the Attorney General for the Commonwealth of Massachusetts, the Secretary had to consider the letter both as an objection to certification made by each of these two individual Plaintiffs supported by the information provided by the Commonwealth’s Attorney General and as a request for an individualized determination as to each of the two named Plaintiffs. Thus, Plaintiffs appear to claim, at least as of the date of the letter, that the two Plaintiffs did exhaust. Whether the letter is sufficient might raise a question intertwined with the merits not properly capable of resolution on a Rule 12(b)(1) motion.

Accordingly, counsel are requested to consider the foregoing issues, confer with each other, and file a joint status report suggesting their joint or separate proposals as to the proper and efficient means for resolution of Plaintiffs’ complaint and briefly the reasons for the proposal(s) and whether, for example, the parties propose proceeding to a hearing on the pending motion as briefed, possible further briefing, conversion of the motion to a different type of dispositive motion possibly augmented or some other course. At the moment, the Court is not inviting further briefing by any party. The Court recognizes that the Defendant's motion also challenges under Rule 12(b)(1) the prayer for injunctive relief and the complaint to the extent it seeks relief on behalf of persons other than the two named Plaintiffs. These two aspects of the motion are not implicated by the issues raised in this Order. The parties shall file the Joint Status

Report by August 31, 2017. The Joint Status Report may propose dates for a hearing on the Motion to Dismiss. The Motion to Continue, Doc. No. 31, is DENIED AS MOOT in light of the Court's order.

SO ORDERED.

/s/ Leo T. Sorokin  
Leo T. Sorokin  
United States District Judge